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**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

**IN AND FOR THE COUNTY OF MARICOPA**

CHARLES ARNOLD, MARICOPA  
COUNTY PUBLIC FIDUCIARY, as  
guardian and next friend on behalf of  
JOHN GOSS; JANCY E. ELLISTON, as  
guardian, conservator and next friend on  
behalf of CLIFTON DORSETT and as  
next friend on behalf of RICHARD  
SCHACHTERLE and SUSAN SITKO;  
TERRY BURCH; and on behalf of all  
others similarly situated,

Plaintiffs,

vs.

ARIZONA DEPARTMENT OF HEALTH  
SERVICE, ARIZONA STATE  
HOSPITAL, MARICOPA COUNTY  
BOARD OF SUPERVISORS, and JANET  
NAPOLITANO, Governor of Arizona.

Defendants.

No. C-432355

**ADHS' RESPONSE TO PLAINTIFFS'  
REPORT ON CONSUMER, FAMILY  
AND ADVOCATE ISSUES**

(Assigned to the Hon. Bernard J.  
Dougherty)

Defendants, the Arizona Department of Health Services and the Arizona State  
Hospital ("ADHS"), by and through undersigned counsel, files a Response to Plaintiffs'  
Report on Consumer, Family and Advocate Issues.

## Issues Substantially Addressed by the Court's Current Orders

ADHS agrees with Plaintiffs' assessment that issues identified by consumers, advocates, and family members are addressed by current Court Orders, specifically, the recently court-approved Corrective Action Plan.<sup>1</sup> While ADHS appreciates the comments made by consumers, family members and advocates, it is important to emphasize to the court and the community the substantial improvements ADHS has made in the behavioral health system in recent years, notwithstanding the findings of the Court Monitor's 2004 Independent Review. The following are three examples of such improvements.

### *Housing:*

- ADHS has expanded, developed and maintained housing for consumers, resulting in an increase from 2,165 units in 1995 to a housing capacity of 5,387 units today (an increase of 3,222 units or a 150% increase).
- ADHS, and its contractor ValueOptions, the Maricopa County Regional Behavioral Health Authority ("RBHA"), have increased the number of rental subsidy units for homeless consumers during the last four years. In 1999, there were 1,110 consumers housed in Maricopa County through the Continuum of Care Homeless Rental Assistance Program. By 2004, 1,579 homeless consumers were housed, an increase of over 469 tenants.
- ADHS, through non-profit behavioral health organizations, purchased and developed twenty-seven (27) houses and fifteen (15) small apartment complexes throughout Maricopa County, providing two hundred and twenty-

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<sup>1</sup> The chart on p. 7 of Plaintiffs' Report lists applicable Court Orders, but does not reference any provisions contained in the Corrective Action Plan.

1 six (226) new permanent housing units primarily for priority population  
2 consumers, with some properties designated for specialty populations.

- 3 • For consumers transitioning out of the Arizona State Hospital, Adult  
4 Residential and Supervisory Care Homes there are twenty-one (21) houses and  
5 eight (8) apartment complexes providing one hundred and twenty-three (123)  
6 housing units.

7 *Supervisory Care Homes:*

- 8 • In the past 18 months, ValueOptions has reduced the number of individuals  
9 living in Supervisory Care Homes from 400 to 222, by assisting 178  
10 consumers to relocate to other housing options in the community.
- 11 • Of the 28 Supervisory Care Homes identified by the Court Monitor as  
12 "priority" or "banned," Sixteen of these homes have been closed, which  
13 represents a 57% rate of closure.
- 14 • Two specialty case management teams have been established to serve the 222  
15 consumers who currently reside in Supervisory Care Homes.

16 *Crisis System:*

- 17 • ADHS has significantly increased the funding and services available through  
18 the crisis network. Under the Exit Stipulation, ADHS was required to develop  
19 a crisis network through the additional, annualized expenditure of \$4,300,000.  
20 The current crisis network funding is \$42,000,000.
- 21 • The Psychiatric Recovery Centers (formerly know as the Urgent Care Centers),  
22 that did not exist when the Exit Stipulation was signed, served approximately  
23 1,250 consumers in May 2004.
- 24 • The Psychiatric Recovery Centers serve in excess of 1,000 consumers a month.
- 25 • The Crisis phone lines receive over 25,000 calls per month.

## Oversight of ADHS and its Budget

Plaintiffs identified the lack of independent oversight of both ADHS and the RBHA as a concern, but conceded the current court orders provide the Court Monitor with sufficient authority to perform her oversight function. While the Court Monitor identified oversight as a concern in the 2004 Independent Review recommendations, she did not ask for additional court orders for authority, funds, or responsibility to oversee ADHS or its budget. Instead, she recommended ADHS “. . . engage in much more vigorous and involved oversight to ensure (the implementation of system changes) and the clinical practices are consistent with the court orders. Court Monitor’s Independent Review, Recommendation 4, p.37

Nonetheless, ADHS is more than willing to describe its budget and accounting oversight practices, including its oversight of ValueOptions, to the Court Monitor, interested consumers or advocacy groups.<sup>2</sup> The following are some examples of current ADHS oversight functions:

- Analyze, and report to ADHS management, data from ValueOptions’ monthly, quarterly and annual financial statements;
- Analyze, and report to ADHS management, data from ValueOptions’ daily and monthly encounter submissions to ensure that services are being provided;
- In conjunction with the Arizona Health Care Cost Containment System, conduct an annual encounter data validation study for accuracy, timeliness and completeness;
- Operate a unit to monitor fraud and abuse;

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<sup>2</sup> In anticipation of addressing budgetary issues, ADHS included a strategy in the Corrective Action Plan to provide information on system funding to the Court Monitor as requested. See Goal 6, Strategy 3, Action Step I.

- In conjunction with independent actuarial consulting firms, develop fee-for-service and capitation rates; and
- Monitor, on a monthly basis, the RBHA capitation and financial performance requirements.

## **Oversight of RBHA Expenditures**

Plaintiffs' report raised concerns about ValueOptions' financial practices that allegedly cause fewer available services for consumers. Each of the identified concerns is addressed below.

### Excessive Profits

ValueOptions current contract allows for a maximum risk corridor of 4%, calculated separately for Title XIX, Title XXI and non-Title XIX populations. In addition, the current contract allows ValueOptions the opportunity to meet clinical performance measures to earn an additional 1%. This is a significant change from prior years when the risk corridor in ValueOptions' contract was 10% for the Title XIX and Title XXI populations.

### Shifting Funds between Client Groups

Since the inception of the contract, ADHS has required ValueOptions to submit annual audited financial statements. Beginning in 2004, ADHS requires ValueOptions auditors to submit an audit opinion for each and every program category.

### Use of Affiliated or Sister Corporations

Since July 2001, ADHS required that any profits earned by affiliated companies be included in ValueOptions' 4% risk corridor calculation. Beginning in fiscal year 2003, ADHS required ValueOptions to submit financial statements of affiliated companies in order to allocate affiliated companies' earnings to ValueOptions' risk corridor.

1 Excessive Administrative Costs

2 Beginning in 2004, ValueOptions is allowed to earn a maximum of 7.5% for  
3 administrative costs. Prior to 2004, administrative costs were capped at 8%. ADHS  
4 controls administrative costs by monitoring ValueOptions' financial data on a monthly  
5 basis.

6 Retention of Pharmacy Rebates

7 In the current contract, ADHS requires ValueOptions to report net reductions in  
8 pharmacy costs and accounts for pharmacy rebates in the calculation of the risk corridor.

9  
10 **Independent Oversight of the System by Consumers and Family Members**

11 ADHS welcomes consumer and family member feedback, input and participation  
12 in evaluating the efficiency of its service delivery system. Indeed, consumers already  
13 have a strong voice in participating in ADHS' operations, specifically with respect to the  
14 seriously mentally ill. Moreover, ADHS is currently implementing a strategic plan to  
15 increase consumer and family involvement in ADHS' operation of the behavioral health  
16 system. The following are some examples of consumer and family member participation:

- 17 • Peer support providers;
- 18 • The Court Monitor's audit team;
- 19 • Mentoring teams at clinic sites;
- 20 • The *Arnold v. Sarn* Oversight Committee;
- 21 • Human Rights Committees; and
- 22 • Various work groups within ADHS.

23 Finally, Plaintiffs' suggest that consumers, advocates and family members should  
24 have the responsibility for ongoing monitoring of the system with regular reporting and  
25 the authority to require corrective action. ADHS cannot delegate this oversight function

1 without statutory authority. See e.g. *Arizona Health Care Cost Containment System v.*  
2 *Bentley*, 187 Ariz. 229, 232, 928 P.2d 653, 656 (App. 1996) (An administrative agency  
3 has no powers other than those delegated to it by the legislature)

4 The legislature has granted ADHS the authority to conduct oversight of the  
5 behavioral health system. See e.g. A.R.S. § 36-3402(B) (Deputy Director is responsible  
6 for the direction, operation and control of the ADHS, Division of Behavioral Health  
7 Services ["ADHS/DBHS"] and reports to the ADHS Director); A.R.S. § 36-3403(B)  
8 (ADHS/DBHS Deputy Director shall administer unified mental health programs  
9 including the functions of community mental health); A.R.S. § 36-3411(B)  
10 (ADHS/DBHS' contracts for the provision of behavioral health services shall include  
11 language and penalties for noncompliance with contract requirements); A.R.S. § 36-550  
12 *et. seq* (ADHS/DBHS Deputy Director is responsible for implementing and evaluating a  
13 statewide system of community mental health residential treatment programs); and  
14 A.R.S. § 36-141 (ADHS Director is authorized to contract for the development and  
15 maintenance of drug and alcohol services).

16 In contrast, the legislature has established advisory committees and boards that  
17 allow the consumer's voice to be heard. See e.g. A.R.S. § 41-3804(G) (Human Rights  
18 Committee shall issue an annual report of its activities and recommendations for changes  
19 to the ADHS Director) and A.R.S. § 36-217 (Arizona State Hospital Advisory Board  
20 makes recommendations to the ADHS Deputy Director and the Arizona State Hospital  
21 Superintendent concerning activities, programs and services provided to patients).

## 22 **Pharmacy Issues**

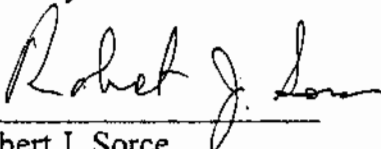
23 ADHS agrees with Plaintiffs' conclusion that the concerns of consumers,  
24 advocates and family members with respect to pharmacy issues are currently being  
25 addressed and no additional court orders are necessary.

1 **Conclusion**

2 ADHS agrees that the majority of the issues identified by consumers, advocates  
3 and family members are addressed by current court orders, specifically by the recently  
4 court-approved Corrective Action Plan, and therefore, no additional court orders are  
5 needed. ADHS is willing to explain its oversight practices, including its oversight of  
6 ValueOptions, to the Court Monitor, consumers, family members and advocacy groups.  
7 ADHS welcomes input, feedback and participation from consumers and family members.

8  
9 DATED this 16<sup>th</sup> day of December 2004.

10 TERRY GODDARD  
11 Attorney General

12   
13 Robert J. Sorce  
14 Assistant Attorney General

15 **ORIGINAL** of the foregoing  
16 filed this 16<sup>th</sup> day of December,  
17 2004 with:

18 Clerk of the Superior Court  
19 201 W. Jefferson  
20 Phoenix, Arizona 85003

21 **COPY** of the foregoing hand  
22 delivered this 16<sup>th</sup> day of  
23 December, 2004 to:

24 The Honorable Bernard J. Dougherty  
25 Superior Court of Maricopa County  
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Suite 4A  
Phoenix, AZ 85003  
Attention: Cheryl - Judge Colin Campbell



1 COPY of the foregoing mailed this 16<sup>th</sup> day  
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